

OFFICE OF THE CITY ATTORNEY

Little Rock, Arkansas

MEMORANDUM

TO: Thomas M. Carpenter
City Attorney

FROM: Bradley S. Chafin *BC*
Deputy City Attorney

RE: Pleasant Ridge Revised Long-Form PCD
Pleasant Ridge Development Company
Chabad Lubavitch of Arkansas vs. City of Little Rock, et al.

DATE: August 4, 2005

This memorandum will briefly discuss the status of the Pleasant Ridge Revised Long-Form PCD and construction issues at the development site. The Ordinances approving the PCD and related matters were passed on November 9, 2004. One of the conditions of the PCD Ordinance stated that no grading permit would be issued for the site until the City issued a building permit for the entire site. Pleasant Ridge submitted a building permit application for all of the buildings at the site except for the Parisian building on June 29, 2005, and Parisian's application was submitted the following week. After approval of the applications, a grading permit was issued at the request of Pleasant Ridge on July 22, 2005. This grading permit contains the condition that work can only be done on the site at the present time.

Some questions have arisen regarding what remedies are available to the City if Pleasant Ridge fails to follow through with the construction of the buildings at the site. In connection with this issue it should be noted that at this time Pleasant Ridge has complied with all of the requirements of the Ordinance and has met all conditions put forth by the City regarding this project.

When Pleasant Ridge submitted their building permit applications, they paid the required fees of \$31,530.50 and \$26,280.25. While building permit fees are refundable in certain limited circumstances, the vast majority of the time they are not. Such determinations are fact intensive and depend upon the timing of the request, how much work (inspections etc.) has been performed by the City and application of internal

requirements established by the Building Codes division. While it is impossible to know at this time whether the fees in this case would satisfy all of the criteria, the assumption should be that the fees are not refundable. Further, there is a plan review fee imposed by the City that is one-half of the building permit fee(s). This fee is not refundable under any circumstances. Thus, at a minimum, Pleasant Ridge would forfeit \$18,599.25, and in all likelihood, the full \$58,000.00 if the construction is not begun and completed in a timely manner. If the construction were not completed the developer would also forfeit the grading permit fee of \$660.00.

In addition to the monetary considerations, a developer who does not complete construction that has been started would also be subject to the requirements of the Land Alteration Ordinance. This Ordinance, which was recently amended, sets out several specific actions a developer must undertake if they are found to be in violation of the Ordinance. A developer may also subject to monetary fines for violations of the Ordinance.

If a developer violates the Land Alteration Ordinance they are subject to punishment pursuant to section 1-9 of the Little Rock Code. This section, among other things, imposes penalties of \$500.00 for each violation. In addition to specific remediation requirements described in the amended Land Alteration Ordinance which are set out below, the Ordinance also requires the responsible party to mitigate any damage done to off-site property or water, and to prevent any further damage from occurring. The Ordinance further states that the responsible party must repair any damage done to public or private property as a result of hauling from the development site.

The amended Ordinance sets out specific requirements that must be undertaken if the City determines there have been violations of the Land Alteration Ordinance. These requirements are described as "land restoration corrective action activities" and include the following:

- Submit site restoration and erosion control plans to Public Works for approval prior to beginning restoration work;
- All restoration work must be begin within ten (10) calendar days of plans approval and conclude within thirty (30) calendar days of commencement unless otherwise provided by the approved plan or other uncontrollable conditions;

- Prior to commencing restoration activities, erosion controls such as silt fence, hay bales, and rock check dams shall be installed and shall remain in place until restoration activities are complete;
- Return all ground surface contours to those in existence prior to land alteration violation while maintaining positive drainage. All slopes must be 3:1 or flatter. Terraces are prohibited;
- All spoil materials and debris including tree debris must be removed from the property;
- Replant one (1) tree for every seven hundred fifty (750) square feet of the area of violation, as determined by the city official, with an average linear spacing of not less than thirty (30) feet with at least two (2) inch caliper nursery or farm grown trees of the same species as those cleared, harvested, removed or damaged. Planting specifications shall be provided on the plan including soil preparation, staking and other necessary measures to ensure trees thrive. If the city official determines the current season of the year is not conducive to sustaining life for trees, the time compliance with these provisions may be extended for not more than one hundred eighty (180) days;
- Establish a permanent vegetative cover of perennial grasses with the addition of fertilizer mixes conducive to site conditions;
- For one (1) year, restored trees shall be watered once per month and additionally every ten (10) calendar days during the months of June, July, August, and September;
- Final inspection and approval is required following completion of required restoration activities. All incomplete items or additional work identified during the final inspection must be completed within seven (7) calendar days following the final inspection;
- All restoration work is to be guaranteed by the responsible party in the form of cash, surety bond or letter of credit as referenced in Section 31-431(2) for two (2) years following its installation and approval by the department of public works;

In addition to the forfeiture of the permit fees, the remediation requirements of the Land Alteration Ordinance and the imposition of monetary penalties for violating the Little Rock Code, the City would also be able to pursue in a court of law all of the remedies available to an aggrieved party in this type of situation. The particular causes of action which could be pursued are unknown at the present time and would be dependent upon the future actions of the developer.

Please let me know if you need any further information.

BSC:dab

cc: Bruce Moore
City Manager

Mayor Dailey and Members of the Board of Directors